

REMARKS

Claims 1-8 are pending in the current application. In the Office Action dated 23 February 2009 the Examiner objects to the Specification as an abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). Claims 3 and 8 are objected to because the acronyms CCD and CMOS are not spelled out. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mahbub (US 6,961,443) in view of Okada et al. (US 6,239,695). In response Applicant submits the present amendment to the Specification, amendments to the Claims, and Remarks. The Examiner's specific objections and rejection will now be addressed in detail.

Objection to the Specification

As amended herein, the Specification now includes an abstract commencing on a separate sheet. Accordingly, the Examiner's objection is now overcome.

Objection to the Claims

As amended herein, claim 3 now spells out the acronyms CCD and CMOS. Claim 8 is cancelled herein; thus the objection to claim 8 is now moot. Accordingly, the Examiner's objection is now overcome.

Claim Rejections under 35 U.S.C. 103(a)

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mahbub (US 6,961,443) in view of Okada et al. (US 6,239,695). As amended herein claim 1 now contains the limitations of claim 2; thus, claim 2 has been cancelled.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the

skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Importantly, Applicant's claim 1 now recites inter alia:

"wherein said image evaluation unit evaluates a situation image, which has been recorded by the imaging system, on the basis of contours and/or edges contained in said situation image"

At page 4 of the Office Action (with reference Applicant's previously presented claim 2), the Examiner states that Mahbub discloses the use of surface characteristics to find the seatbelt's elongated and curved shape, and that it would have been obvious to one of ordinary skill in the art that in order to determine the elongated and curved shape of the seatbelt, a system must conform to the requirements of locating and analyzing the contours and/or edges of the seatbelt. Applicant respectfully traverses.

According to MPEP 2143.01 VI,

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." In this case, "The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.). (Emphasis added).

Mahbub discloses an occupant sensor in which 3D images are obtained from a

scene and subsequently analyzed in order to classify the seat occupancy. The analysis of the images is extensively described in columns 5 to 14 and includes, for example:

- 1) segmentation of the scene in order to subtract the background of the image and to reduce the number of data points that need to be processed by a recognition algorithm (starting on column 5, line 46);
- 2) analysis of the **volumetric** shape of the region of interest (this analysis of the volumetric shape including the scanning of the image in order to identify specific **spherical surfaces** representing parts of a passenger or the like (see column 8); and
- 3) aside from the modeling shapes of the surfaces, mathematical features are also used for robust classification of features, wherein shape descriptors are applied to the 3-D segmented ROI for volumetric analysis, wherein projections of the volume on the XY, YZ, and ZX planes (which respectively correspond to the front, side and top views of the ROI volume shown in FIGS. 13, 12 and 14) are analyzed in 2-D. (see column 8, lines 56-63).

It respectfully follows from the above discussion that the Mahbub device contains an extensive description of the data extraction performed, and this extensive description does not relate to the evaluation of contours and/or edges contained in the recorded image as is now required in Applicant's claims (there would be no need for further evaluation of contours and edges in the recorded image). Instead, Mahbub teaches a detailed 3-D method, wherein the features of interest are clearly identified and evaluated based on their 3 dimensional shapes. As such, a modification to the Mahbub device that would require a change from 3-D identification and evaluation to an evaluation based on contours and/or edges would also clearly require a substantial reconstruction and/or redesign of the detailed 3-D process taught in Mahbub. Such a substantial reconstruction and/or redesign of the Mahbub device would be improper under MPEP 2143.01 VI and *In re Ratti*. Accordingly, the proposed modification of Mahbub (as set forth by the

Examiner with reference to the previously presented claim 2) is improper under MPEP 2143.01 VI and *In re Ratti*.

Applicant respectfully asserts that Okada does not remedy the above discussed deficiency of Mahbub, and is not used as such by the Examiner.

For at least the reasons discussed above, Applicant respectfully asserts that the proposed combination of Mahbub and Okada does not teach or suggest all of the limitations of Applicant's now amended claims 1-7 (claim 8 has been respectfully cancelled). Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 1-7 with respect to the proposed combination of Mahbub and Okada.

Conclusion

Applicant respectfully submits that the Examiner's objections and rejections are herein overcome. Applicant respectfully requests withdrawal of all rejections and objections and issuance of a Notice of Allowance.

Applicant hereby petitions under 37 C.F.R. §§1.136, 1.137 for any extension of time necessary for entry and consideration of the present Response.

If there are any charges with respect to this amendment, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

The Examiner is invited to contact Applicant's attorneys at the below telephone number regarding this Response or otherwise concerning the present application.

Respectfully submitted,

CANTOR COLBURN LLP

By: /Daniel R. Gibson/
Daniel R. Gibson
Registration No. 56,539
CANTOR COLBURN LLP
20 Church Street
22nd Floor
Hartford, CT 06103
Telephone: 860-286-2929
Facsimile: 860-296-0115
Customer No. 23413

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